

**NEW SOURCE REVIEW
REFORM RULE UPDATE
DIVISION OF AIR QUALITY**

**STAKEHOLDER MEETING
PSD REFORM RULE
HISTORY AND PURPOSE**

New Source Review Stakeholder Meeting 5 – UDAQ NSR Technical Review

The fifth UDAQ stakeholder meeting was held November 29, 2005. At the meeting UDAQ presented a technical analysis of the impact of the NSR Reform rule on PSD and major sources in Utah.

The NSR reform rule changes that are part of the UDAQ proposed State Implementation Plan (SIP) revision include:

1. Actual to Projected Actual Applicability Test.
2. Plant-wide Applicability Limits (PALs)

NSR REFORM PROGRAMS

Actual to Projected Actual Applicability Test (A2PA)

For physical or operational changes to existing emission units, instead of determining applicability for significance emissions increases based on the difference between actual emissions to potential to emit, EPA will now allow a source to calculate the applicability limit as the difference between exiting baseline actual emissions to projected actual emissions.

BASELINE ACTUAL EMISSIONS: the rate of emissions, in tons per year, of a regulated NSR pollutant, emitted during any consecutive 2 year period within a 10-year period. This rate must be adjusted downward to reflect any legally enforceable emission limitations imposed after the selected baseline period.

PROJECTED ACTUAL EMISSIONS: Maximum annual rate, in tons per year, an existing emissions unit is projected to emit a regulated NSR pollutant in any one year period out of the five years after the construction of the project.

Plant-wide Applicability Limits (PALs)

Plantwide Applicability Limit (PAL). Sources that operate within facility wide emission caps will be given the flexibility to modify their operations without undergoing NSR. A PAL threshold is based on baseline actual emissions of any emission units that contribute to the regulated pollutant plus the significance level increase for that pollutant. A PAL expires after 10 years and can be renewed.

NSR REFORM RULE – COMMON ELEMENTS

- NEW RULES APPLY TO NSR MAJOR PSD AREA SOURCES ONLY
- NEW RULES APPLY ONLY TO NSR MAJOR MODIFICATIONS AT EXISTING SOURCES
- NEW RULES ARE VOLUNTARY FOR INDUSTRY. SOURCES MAY USE
- NSR REFORM RULE – CONTROL TECHNOLOGY

AIR QUALITY REGULATORY PROGRAMS

The UDAQ State permitting rule (R307-400) is the center of the regulatory effort in reference to stationary sources and the implementation of the Federal and State regulatory programs. The implementation of control technology for the NSR program is enhanced given the uniform application of BACT for State and Federal NSR programs.

NSR REFORM RULE PURPOSE & HISTORY

The Reform Rule was designed to Encourage:

- Increased Operational Flexibility while Maintaining Air Quality Standards
- Energy Efficiency Improvements
- Investments in New Technologies
- Modernization of Facilities

NSR REFORM RULE HISTORY & PURPOSE

- The NSR reform process began in 1992 with the formation of the Clean Air Act Advisory Committee, in part, as a response to the WEPCO Rule.
- EPA requested public comment on the proposed rule in 1996, 1998 & 2003.
- NSR Reform Rule finalized December 31, 2002.
- Ten northeastern states filed a motion on January 30, 2003, in the Court of Appeals for the District of Columbia – New York vs. EPA
- EPA granted, in July of 2003, reconsideration and requested additional public comment on six issues related to the original December 2002, NSR Reform Rules.
- DC District Court issued its decision on New York vs. EPA June 2005

WEPCO RULE

As a result of the Wisconsin Electric Power Company vs. EPA (WEPCO) court ruling in 1990, EPA allowed the use of the actual to projected actual applicability test for electric utility sources (1992 WEPCO Rule). The NSR Reform Rule extends the WEPCO rule to any major source modification.

DC CIRCUIT COURT NSR REFORM RULING

The DC Court found the following reform elements to be permissible interpretations of the CAA:

- Use of the Actual to Projected Actual Applicability Test
- Use of the ten year look back period for baseline actual emissions determinations
- The use of demand growth exclusion in projected future actual emission calculations
- The Plant-wide Applicability Limitations (PAL) program

The Court concluded that the CAA unambiguously defines “increase” in terms of actual emissions. The DC Court also found that all procedural challenges related to lack of notice to be without merit. The Court rejected the challenges to EPA’s Environmental Impact Analysis.

Issues that were not addressed by the Court for lack of a factual record included:

- Alternative NSR Standards
- Anti-backsliding
- Menu of Alternatives

NSR REFORM RULE HISTORY & PURPOSE

The development of the EPA’s NSR Rule has been a ten year process that included the input from air quality experts across the country including state and local air quality agencies, advocacy groups, industry groups and the public. EPA also issued a technical analysis of the anticipated air quality impacts of the NSR Reform.

As part of the NSR Reform effort UDAQ implemented an extensive Stakeholder Outreach Program that included:

- Two open access Stakeholder Meetings – April 27, 2004 and March 23, 2005.
- Two smaller Rule Development Stakeholder Meetings – April 19 and 27, 2005.
- Stakeholders were informed, by e-mail, on a regular basis of changes and developments in both the Federal and State rules. Stakeholders were actively encouraged to join the Rule Development Group or comment on the development of the rules by e-mail.
- UDAQ developed a dedicated NSR Reform website to present information on the NSR Reform program and links to UDAQ staff working on the project.
- Today, as part of the UDAQ stakeholder process, UDAQ will present an analysis of the impact of the NSR Reform rule on PSD and Major Sources in Utah.

IMPLEMENTATION BY STATES

For delegated States, the new rules became effective March 3, 2003. California, Hawaii, District of Columbia, Illinois, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, South Dakota, and Washington.

Region VIII States:

- South Dakota – Reform Rule implemented by delegation March 2003
- Colorado – State Rule April 2004 - SIP submitted to EPA July 2004
- North Dakota – State Rule IBR 2004 – SIP Revision Feb. 2005

- Montana - Will submit State Rule to Environmental Board December 2005
- Wyoming – Will submit State reform rule to Environmental Council – early 2006

EPA SIP REQUIREMENTS

It is UDAQ's considered opinion that based on federal and state rule making processes and technical analyses the provisions in the Reform rule will not weaken the combined Federal and State NSR program in Utah. Based on the cooperative efforts of the EPA and UDAQ, we do not anticipate negative impacts on air quality due to the Reform Rule.

UDAQ was prepared to proceed with the development of the NSR Reform rule after a two year stakeholder process, to meet the original January 2, 2006 implementation deadline when the DC Circuit court decision (June 2005) placed the ruling making on hold. Based on guidance received from EPA in September of 2005 to proceed with the implementation of those sections of the rule that were upheld by the DC Court, UDAQ submitted the NSR rule to the Utah Air Quality Board on November 2, 2005. The Air Quality Board recommended a 45 day comment period and asked UDAQ to develop a technical analysis of the impact of the NSR rule on sources in Utah.

Region VIII has indicated that they expect states agencies to either submit a reform rule SIP by January 2, 2006 or demonstrate a good faith effort to develop a reform program. Region VIII has indicated that the consequences of not pursuing a reform package could include sanctions and eventual a promulgation of a Federal Implementation Plan (FIP).